

HIGH COURT OF GUJARAT AT AHMEDABAD

MISC.CIVIL APPLICATION NO.201 OF 1991.

Date of decision: 8.11.1995.

For approval and signature

The Honourable Mr. Justice S.M.Soni

and

The Honourable Mr. Justice R.R. Jain

Mr. P.B. Sheth, advocate for applicant.

Mr. K.S. Nanavati, advocate for respondent Nos.1 & 2.

1. Whether Reporters of Local Papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

Coram:S.M.Soni & R.R.Jain, JJ.

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November 8, 1995.

Oral judgment (Per Soni, J)

Applicant has filed this application under Section 10 of the Contempt of Courts Act praying for action against respondents for noncompliance of the order passed by the

Gujarat Secondary Education Tribunal in Application No.96 of 1988 on 7.2.1990.

When this matter is called out, neither of the parties nor their advocates are present in court.

The order for which noncompliance is alleged reads as under:

"In the result, application is partly allowed Prayer to set aside the order terminating the service of the applicant and reinstatement is not accepted. However, it is ordered that opponents shall pay salary for notice period to the applicant if the same is not paid. If difference of salary, as per Desai Pay Commission, is not paid, it be paid and if any amount is lying deposited in provident fund account of the applicant it be paid. This direction be complied within a month." (Free hand translation).

At the stage of notice, opponent Nos.1 and 2 have filed affidavit in reply. In paras 3, 4, 5 and 6, it has been stated question of paying salary for notice period does not arise as notice was already served well in advance in accordance with rules. As regards difference of salary as per Desai Pay Commission, the same has already been paid and the cheque number is quoted. It is also stated that the applicant was not eligible to get employer's contribution from the provident fund account as he has not rendered services to become eligible for contribution. The contribution of the applicant in provident fund account has been paid and the cheque number is referred to therein. These allegations are not controverted by filing affidavit in rejoinder.

In view of the above state of affairs, claim of the applicant alleged to have been not complied with is a disputed one. It was the duty of the Tribunal to decide as to whether the applicant was entitled to salary for notice period and whether he was entitled to the contribution of employer from the provident fund account. In the absence of such a decision and in particular when whatever was due to the applicant account to the employer has been paid, it cannot be said that there was any defiance of the order of the Tribunal, much less deliberate or wilful defiance. Hence, it cannot be said that the opponents have committed any breach of any direction or order or have not complied with the same or there is any wilful or deliberate defiance of the order. Hence, these facts do not constitute contempt as defined in clause 10 (b)(ii) of the Contempt of Courts Act.

Therefore, application is liable to be dismissed and is hereby dismissed. Rule discharged. No costs.